

1 POWER AUTHORITY OF THE STATE OF NEW YORK

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2  
3 PUBLIC HEARING

4 Wednesday, September 8, 2010 - 3:00 P.M.

5  
6 Niagara Power Project  
7 Lewiston, New York

8 CONTRACT FOR SALE OF 15 MW OF EXPANSION POWER TO  
9 YAHOO! INC.

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10  
11 Public hearing held at the Niagara  
12 Power Project, Community Room, Lewiston, New York,  
13 on September 8, 2010 commencing at 3:00 P.M.  
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1 REPORTED BY: BUYERS & KACZOR REPORTING SERVICES,  
2 BY: MICHELLE R. KWIATEK,  
3 1400 Rand Building,  
4 Buffalo, New York 14203.  
5 (716) 852-2223

6 BEFORE: POWER AUTHORITY OF THE STATE OF NEW  
7 YORK,  
8 Angela Graves, Deputy Corporate  
9 Secretary,  
10 123 Main Street,  
11 White Plains, New York 10601.

12 Also Present: Michael Huvane,  
13 Vice President for Marketing and  
14 Economic Development at the New  
15 York Power Authority.

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1                                   ANGELA GRAVES:            Good  
2    afternoon.   My name is Angela Graves, and I'm the  
3    Deputy Corporate Secretary of the New York Power  
4    Authority.   This public hearing is being conducted  
5    by the Authority to provide an overview and receive  
6    public comment on a proposed contract with Yahoo!  
7    Inc. for the sale of up to fifteen megawatts of  
8    Expansion Power from the Niagara Power Project.

9                                   Pursuant to Section 1009(1) of the  
10   Public Authorities Law, notice of this hearing was  
11   published in the following nine newspapers once a  
12   week for the four weeks leading up to the hearing:  
13   the Niagara Gazette, the Buffalo News, Buffalo  
14   Business First, the Lewiston Porter Sentinel, the  
15   Dunkirk Observer, the East Aurora Bee, the Orchard  
16   Park Bee, the Albany Times Union and Newsday.  
17   During the thirty-day period prior to today's  
18   hearing, copies of the proposed contract and service  
19   tariff have been available for inspection at the  
20   Authority's office in White Plains, as well as on  
21   the Authority's Web site.

22                                  Also pursuant to Section 1009(1)  
23   of the Public Authorities Law, notice of this  
24   hearing and copies of the proposed contract and  
25   service tariff were sent to Governor David Paterson;

1 President Pro Tem of the New York State Senate,  
2 Malcolm Smith; Speaker of the Assembly, Sheldon  
3 Silver; Chairman of the Senate Finance Committee,  
4 Carl Kruger; Chairman of the Assembly Ways and Means  
5 Committee, Herman Farrell; Senate Minority Leader,  
6 Dean Skelos and Assembly Minority Leader, Brian  
7 Kolb.

8           If you plan to make an oral  
9 statement at this hearing and have not yet filled  
10 out the form at the sign-in desk, please do so now.  
11 We ask that you give copies of your written  
12 statement to the reporter and Ms. Johnson before or  
13 after you deliver your remarks. Although your  
14 written statement can be whatever length you like,  
15 we would ask those presenting an oral statement to  
16 limit their remarks to five minutes. If your oral  
17 statement summarizes a written statement, both will  
18 appear in the record of the hearing.

19           The record of this hearing will  
20 remain open through close of business tomorrow,  
21 Thursday, September 9th, 2010, for the submission of  
22 any additional comments or statements. These should  
23 be addressed to the Authority's Corporate Secretary  
24 at 123 Main Street, 11-P, White Plains, New York  
25 10601; or may be faxed to (914)390-8040; or e-mailed

1 to secretarys.office@nypa.gov. Please see Ms.  
2 Johnson on your way out if you have any additional  
3 questions.

4 Full stenographic minutes of the  
5 hearing will be made, and will be incorporated,  
6 along with the written submissions, into the record  
7 that will be reviewed by the Authority's Trustees.  
8 The transcript will be available for review at the  
9 Authority's office in White Plains and on our Web  
10 site, www.nypa.gov.

11 At this point, I will turn the  
12 microphone over to Michael Huvane, the Authority's  
13 Vice President for Marketing and Economic  
14 Development, who will provide additional details on  
15 the proposed contract. I will then call on  
16 speakers, starting with any elected officials. Mr.  
17 Huvane.

18 MICHAEL HUVANE: Thank you, Ms.  
19 Graves. Good afternoon. My name is Michael Huvane.  
20 I am the Vice President for Marketing and Economic  
21 Development at the New York Power Authority. I am  
22 here today to present an overview of a proposed  
23 contract with Yahoo! Inc. for the sale of up to  
24 fifteen megawatts of Expansion Power from the  
25 Niagara Power Project.

1 Under Section 1005, Subsection 13,  
2 of the Power Authority Act, as amended by Chapter  
3 313 of the Laws of 2005, the Authority may contract  
4 to allocate two hundred fifty megawatts of firm  
5 hydroelectric power known as EP, Expansion Power.  
6 Each application for an allocation of Expansion  
7 Power must be evaluated under criteria that include,  
8 but need not be limited to, those set forth in  
9 Public Authorities Law Section 1005, Subsection 13,  
10 paragraph A, which details general eligibility  
11 requirements. Among the factors used for evaluating  
12 a request for an allocation of hydropower are the  
13 number of jobs created, the capital investment in  
14 the business' facilities, the number and types of  
15 jobs created, and the associated wages and benefits.

16 At their meeting of May 19, 2009,  
17 the Trustees approved an allocation of fifteen  
18 megawatts of Expansion Power to Yahoo! for a term of  
19 fifteen years. Approval of the allocation was based  
20 on an evaluation of Yahoo!'s application for  
21 hydropower, in which the company proposed to build a  
22 new regional datacenter to serve its east coast  
23 customers. The allocation is contingent on Yahoo!'s  
24 investment of one hundred fifty million dollars to  
25 build the datacenter, and a commitment to create one

1 hundred twenty-five jobs.

2 On March 15, 2010, the Authority  
3 and Yahoo! signed an interim agreement for the sale  
4 of Expansion Power and Energy. The purpose of the  
5 agreement was to enable Yahoo! to accept delivery of  
6 its EP allocation at the start up of its datacenter  
7 operation on April 1st, 2010. Also included in the  
8 agreement was an appendix cosigned by the Authority,  
9 Yahoo! and the delivering utility, New York State  
10 Electric & Gas Corporation, to effectuate an April  
11 1, 2010 delivery arrangement.

12 The agreement, in part, cites  
13 Public Authorities Law Section 1005, paragraph 11:  
14 The Authority is authorized to exercise all the  
15 power necessary or convenient to carry out and  
16 effectuate the purposes and provisions to sell  
17 electric power, and generally to do anything and  
18 everything necessary or convenient to carry out the  
19 purposes of the Title 1 of Article 5 of the Public  
20 Authorities Law. Furthermore, the agreement cites  
21 the May 19, 2009 Trustees' authorization to take any  
22 and all actions and execute and deliver any and all  
23 agreements and other documents necessary to  
24 effectuate approval of the allocation.

25 The agreement expires the earlier

1 of December 31, 2010, or until a long-term contract  
2 becomes effective. It is anticipated that the  
3 contract will become effective prior to December 31,  
4 2010, after the anticipated completion of the  
5 approval process required by Public Authorities Law  
6 Section 1009.

7 The Authority will provide firm  
8 electric service from the Niagara plant, consisting  
9 of firm power capacity and energy service, subject  
10 to pro rata curtailment when there is insufficient  
11 generation at the Niagara and St. Lawrence/FDR  
12 facilities. The power and energy will be sold on a  
13 direct-sale basis. Delivery will be provided by the  
14 local utility, NYSEG, and billed directly to Yahoo!

15 The fifteen megawatt allocation is  
16 contingent on Yahoo!'s investment of one hundred  
17 fifty million dollars, completion of the new  
18 datacenter facility, and creation of a total of one  
19 hundred twenty-five new jobs. The allocation amount  
20 will be subject to an enforceable employment  
21 commitment of one hundred twenty-five jobs, and  
22 includes an annual job reporting requirement and a  
23 job compliance threshold of ninety percent. Should  
24 Yahoo!'s actual jobs reported fall below the  
25 compliance threshold, the Authority has the right to

1 reduce the allocation on a pro rata basis. The  
2 rates, terms and conditions for the sale are  
3 contained in the relevant service tariffs, which are  
4 the same tariffs applicable to all Expansion Power  
5 allocations. Specifically, Service Tariff Number  
6 EP-1 is effective through June 30, 2013, and Service  
7 Tariff Number WNY-1 becomes effective from July 1st,  
8 2013 until the expiration of Yahoo!'s allocation on  
9 March 31, 2025. The contract also requires that an  
10 energy efficiency audit be performed not less than  
11 once every five years during the term of electric  
12 service.

13 The contract is subject to a  
14 public hearing and approval by the Governor, as set  
15 forth in Section 1009 of the Public Authorities Law.

16 As Ms. Graves stated earlier, the  
17 Authority will accept your comments on the proposed  
18 contract until close of business tomorrow, Thursday,  
19 September 9th, 2010. I will now turn the forum back  
20 over to Ms. Graves.

21 ANGELA GRAVES: Thank you, Mr.  
22 Huvane. I will now call on those people who wish to  
23 make an oral statement. When I say your name,  
24 please come up to the podium, and limit your  
25 statement to five minutes.

1                                   We have New York State Senator  
2 George Maziarz.

3                                   SENATOR MAZIARZ:       George  
4 Maziarz. Thank you very much. It's a pleasure for  
5 me to be here.

6                                   I want to state at the very  
7 beginning that I am here to speak in favor of this  
8 allocation. I welcome Yahoo! to Lockport. I thank  
9 you very much. Lockport could not have made a  
10 better choice.

11                                  To let you know, my area stretches  
12 from this river, all the way to the Genesee River in  
13 the City of Rochester. Actually, I have been aware  
14 of your construction, because I live not very far  
15 from where you're at. I drive by there at least  
16 four times a day.

17                                  Again, thank you very much for  
18 being here and for choosing Lockport. I want to  
19 congratulate Marc Smith, Supervisor of the Town of  
20 Lockport, for a great job, and this is going to be a  
21 great legacy for all of you.

22                                  As I said, I want to stress that  
23 I'm here to speak in favor of this allocation.  
24 Yahoo! is just the right type of company that should  
25 be getting low-cost hydropower from the Niagara

1 Project, to locate here.

2 Now, having said that, having  
3 stressed the positive and everything, I would say  
4 that I'm somewhat disappointed that this is  
5 probably, I don't know, one of a number of public  
6 hearings that I have attended, hosted by the New  
7 York State Power Authority, I'm disappointed that  
8 Mr. Kessel is not here, the CEO of the Power  
9 Authority. I'm very disappointed that our Western  
10 New York Board of Trustee, Pat Curley, is not here  
11 today to hear about one of the good things that  
12 should be happening every month in Western New York,  
13 and most particularly, Niagara County.

14 I do question, though, I think the  
15 process. Mr. Huvane, you talked about how this  
16 allocation was actually approved by the board of  
17 trustees back in -- back in May, I think, of '09.  
18 You said -- you were talking kind of quickly, and I  
19 know that's the process, and how all the contracts  
20 have been signed and everything is done, and it  
21 seems like it's one of the last things to do.  
22 Yahoo! is going to have a ribbon-cutting ceremony in  
23 twelve days. I am counting the days. Yahoo! is  
24 going to have a ribbon-cutting in twelve days, and  
25 here we are now asking for public input. I think

1 it's good to have public input. I think it would be  
2 better in the beginning of the process, rather than  
3 at the end of the process.

4 I say again, in a very positive  
5 way, I just think that the Power Authority  
6 administration sometimes, many times, does it  
7 backwards. There is another company down in Long  
8 Island, Brookhaven Labs, where the power from this  
9 project, well, not this building, but the building  
10 right next door to here, power from this building  
11 was sent down to Long Island, Brookhaven Labs, to  
12 enhance job creation and economy down there, and the  
13 public hearing was held down there. The people of  
14 Niagara were cheated out of an opportunity to  
15 comment on that, despite promises from Mr. Kessel  
16 that they would be. That was not the only time Mr.  
17 Kessel had not told the truth to myself or to the  
18 people of Niagara County or Western New York.

19 But having said that, just my only  
20 issues are with the process, but I do want to,  
21 again, say that I am very much in favor. This is  
22 exactly what the New York Power Authority should be  
23 doing. It should be utilizing this great Western  
24 New York asset for creation of jobs and economic  
25 development here in Western New York, and not taking

1 this asset and using it to enhance and create jobs  
2 for very profitable companies on Long Island.

3 So I'm again very much in favor of  
4 this. I want to welcome Yahoo! I'm looking forward  
5 to the opening on September -- it's still September  
6 20th, isn't it? Well, I'm looking forward to it.  
7 Thank you very much.

8 ANGELA GRAVES: Thank you,  
9 Senator.

10 I now call on Mr. David Kinyon,  
11 CEO of the Town of Lockport Industrial Development  
12 Agency.

13 DAVID KINYON: My name is  
14 David Kinyon. I'm the Chief Executive Officer of  
15 the Lockport Industrial Development Agency for the  
16 Town of Lockport. Thank you for the opportunity to  
17 comment on this proposed contract for the sale of  
18 fifteen megawatts of Expansion Power to Yahoo!

19 The Town of Lockport Industrial  
20 Development Agency, by the way, is the owner of the  
21 Lockport Industrial Park, which was part of the  
22 process of attracting Yahoo! to Western New York.  
23 The Town of Lockport Industrial Development Agency  
24 has sold a thirty-acre parcel within our Industrial  
25 Park to Yahoo! So I wanted to make sure that I

1 disclosed that particular part of the overall  
2 package that was part of bringing Yahoo! to Western  
3 New York. Otherwise, I am going to read from my  
4 prepared written statement for the oral testimony  
5 today.

6 I am pleased to submit this  
7 statement in support of the New York Power  
8 Authority's proposed contract to sell fifteen  
9 megawatts of Expansion Power to Yahoo! As part of  
10 the negotiations to attract Yahoo! to the Lockport  
11 Industrial Park, the availability of Expansion Power  
12 was a major incentive that the State of New York  
13 offered, and which factored heavily into bringing  
14 Yahoo! to Western New York.

15 Since the Power Authority's  
16 initial approval of Yahoo!'s application for  
17 Expansion Power in May of 2009, Yahoo! has  
18 aggressively pursued its business plan and has  
19 demonstrated its commitment to Western New York's  
20 economy. Yahoo! broke ground August 12 of last year  
21 for Phase I of its Lockport datacenter, completing  
22 the build-out of three data wings and the  
23 administrative center by May of this year. Yahoo!  
24 immediately commenced construction of Phase II, and  
25 it appears to be on course to complete its one

1 hundred eighty thousand square foot, one hundred  
2 fifty million dollar capital project by the end of  
3 2010.

4                   Western New York contractors have  
5 been engaged on the worksite throughout the  
6 construction period, boosting employment among  
7 Western New York trades. Over the past year, Yahoo!  
8 has been hiring and training the network operations  
9 center technicians, site operations technicians, and  
10 the facilities operating engineers, who will be  
11 integral in Yahoo!'s regional datacenter operations  
12 in Lockport, as well as throughout its worldwide  
13 internet service.

14                   Clearly, Yahoo! has demonstrated  
15 its commitment to New York State and to Western New  
16 York through its performance to date. The Town of  
17 Lockport Industrial Development Agency supports  
18 final approval by the New York Power Authority of  
19 the contract with Yahoo! for Expansion Power in  
20 order to fulfill the State of New York's commitment  
21 to this company. Thank you for your consideration  
22 of our remarks.

23                   ANGELA GRAVES:           Thank you. I  
24 will now call Mr. Scott Noteboom.

25                   SCOTT NOTEBOOM:           So I'm pretty

1 lucky at my job at Yahoo!, I get to travel the  
2 entire world to find the right place in the world  
3 for a datacenter. Those total number of places is  
4 actually pretty low.

5                   Currently, relative to strategic  
6 locations in the datacenter, we are talking about  
7 seven in the entire world. I have gone to many  
8 places that I have never been to. When I came to  
9 Buffalo -- honestly, I'm a guy that's used to New  
10 York City. When I came to Buffalo, it felt like  
11 home. I was a kid who grew up in Detroit. I'm from  
12 a generation of auto workers. I now remember, as a  
13 kid, you know, we packed up the moving truck, moved  
14 to California because, you know, I saw what happened  
15 when a manufacturing center of excellence kind of  
16 fell apart, and we had to move.

17                   In coming to Buffalo, a lot of  
18 things felt real familiar to me, a lot of the  
19 infrastructure, a lot of the work ethic that I now  
20 think of my dad and my grandfather and so on, and it  
21 was very clear to me that this was the most familiar  
22 place that I have been to. The way I grew up, this  
23 was a good place to invest in a datacenter, because  
24 a manufacturing global center of excellence is  
25 really the same as what it takes to be a datacenter

1 related to technology in the global center of  
2 excellence. So it was a pretty easy decision.

3 I just wanted to state that I am  
4 real confident in, you know, not only the fifteen  
5 megawatts and one hundred and twenty-five jobs, I  
6 have been looking around for my company to show we  
7 are a global company. When you look all over the  
8 world, it makes sense to have jobs where we can get  
9 the highest productivity. I believe this Buffalo/  
10 Lockport area is among the most productive in the  
11 world. People are always trying to lower  
12 manufacturing and outsource to India and China, and  
13 such, and in some aspects, those may look at lower  
14 costs, but when you look at the total cost, Buffalo  
15 is looking really well. That's where the jobs are  
16 coming from, that's where we can be long-term and  
17 continue to be able to grow. I want to follow  
18 through working here. Up here, there have been  
19 great people and they have been cooperative,  
20 supportive and, you know, we want good people to  
21 work.

22 We are well on path with one  
23 hundred and twenty-five jobs. We have a major  
24 investment in building Phase I, swinging into Phase  
25 II. To be quite honest with you, this is just

1 building to capacity for what we see on the radar  
2 now.

3 My goals are to continue to grow  
4 in this area, continue administrative functions  
5 rather than just datacenter-related jobs, finance-  
6 related jobs, marketing-related jobs, sales-related  
7 jobs, all of the other areas in Yahoo! I think we  
8 can demonstrate that Buffalo and Lockport is great.

9 So I just wanted to say thank you.  
10 I am excited. I feel very comfortable here, and we  
11 want to make this a long-term place to do business,  
12 and we are here to do what we committed to do, and  
13 even more relative to the community at large. So  
14 thank you.

15 ANGELA GRAVES: Thank you.  
16 Thomas Frank.

17 THOMAS FRANK: Thomas Frank,  
18 I'm here with Neil Frank. I'm here with the former  
19 mayor of the Village of Williamsville.

20 As far as the project, I have been  
21 involved in the relicensing of the Niagara Power  
22 Project, as far as issues related to the watershed  
23 binational Niagara watershed tributaries, including  
24 Tonawanda and Ellicott Creek. So I have been  
25 appointed to the Bicentennial War of 1812 Legacy

1 Council. I have also been asked by the supervisor  
2 for the Town of Amherst, Dr. Barry Weinstein,  
3 regarding some of the initiatives, project  
4 initiatives, having to do with the Erie Canal and  
5 National Heritage Corridor, okay.

6 As far as the protocol and the  
7 processes having to do with the Niagara Greenway  
8 Commission, as far as an application, that's why I  
9 came here, as to, perhaps, get some support for this  
10 Niagara War of 1812 Bicentennial Legacy Council  
11 project proposal having national -- having --  
12 regional and binational and statewide New York, as  
13 well as national and international potential for the  
14 region, the binational region. So I was just hoping  
15 to have the opportunity to meet with the people from  
16 Google regarding an application that transcends some  
17 eight different levels of political jurisdiction,  
18 involving some twenty metropolitan municipalities in  
19 the binational Niagara, having to do with the  
20 interconnections between the hydroelectric power  
21 generation in the United States and Canada, as well  
22 as the diversion functions having to do with the  
23 Erie Canal Corridor and the St. Lawrence Seaway,  
24 also known as the Welland Canal.

25 So the last thing I would like to

1 mention is, you know, as far as -- there is going to  
2 be a World Canal Conference in Rochester, New York  
3 on September 19th through the 24th, where there is  
4 going to be representatives from some -- hundreds of  
5 representatives from some twenty different nations  
6 regarding the -- well, it has to do with the  
7 binational economic tourism development of the  
8 seaway and the greenway, as far as establishing a  
9 binational identity that takes this  
10 interrelationship between those two hydrologically-  
11 defined industries into a project that will have  
12 long-term benefits. And I'm hoping to gain some  
13 research and development support for the development  
14 of this project, which is seen as having some two  
15 point five billion dollars of a valued proposition  
16 associated with this venture.

17                   And what I'm specifically doing is  
18 promoting outdoor athletic recreation, health/  
19 science, arts and cultural history throughout all of  
20 the school districts in Southern Ontario and Western  
21 New York. But it's also -- I can give you the  
22 application that was presented to the Town of  
23 Amherst for arts and cultural history for the region  
24 that is seen as having certain deadlines for  
25 collaboration on these eight different levels.

1                   MICHAEL HUVANE:       Mr. Frank, you  
2 are aware that this is a public hearing on the  
3 Yahoo! contract?

4                   THOMAS FRANK:        Right.  And  
5 the contract -- right.  The Yahoo! contract, right.

6                               As far as their, you know -- the  
7 regional -- as far as the technology that we have  
8 locally, we are looking at something that -- look,  
9 we met with the Queen of England, okay, and there  
10 are some binational aspects.  As far as Yahoo,  
11 they're an international company, and as far as the  
12 local community organizations, as far as  
13 development, this is also seen as being a higher  
14 education consortium project that will involve the  
15 University of Buffalo in the 2020 or 2030 Plan, or  
16 whatever they're going to call it, as far as Brock  
17 University and Niagara University, all the colleges  
18 and universities being in Western New York being  
19 involved.

20                               But also, the important thing is  
21 that the project that I'm involved in has to do  
22 with, really, the Canadians, as far as the Doors  
23 Open Canada, which is coming up in October, that the  
24 Canadians, as well as the Americans, as far as  
25 hockey conferences or tournaments, that there is

1 some development as far as software application  
2 developments. Specifically, that I have been  
3 several years in, as far as developing the  
4 conceptual architecture for this, having also issues  
5 that are connected to customs and immigration and  
6 homeland security, okay. That what the Canadians  
7 are seeing, as far as the bicentennial of the War of  
8 1812, is the act to take and extend the benefits  
9 from the Olympics that were in Ottawa this year, and  
10 extend those benefits to the Olympics, the Summer  
11 Olympics, that are going to be in London in 2012,  
12 okay.

13 So what I'm proposing is the  
14 possibility of taking the greenway, and having  
15 Yahoo! be an official Olympic sponsor, okay. I'm  
16 developing a model as far as the Greenway  
17 Tournament, the Rider Cup Tournament, that will  
18 extend from Lake Erie to Lake Ontario, and to adopt  
19 that model to the river in London, okay. And this  
20 is, you know -- I was hoping to have the opportunity  
21 to see if Yahoo! was doing things like Google, as  
22 far as a project that they're developing, as far as  
23 Google maps dot com. Now, these are development  
24 projects which are seen as -- well, it's being  
25 conceived as Olympic cycling, six competitive

1 disciplines, as far as creating water cycle  
2 demonstration events in the Olympics that can have,  
3 well, regional and binational -- statewide, national  
4 and international marketing potential opportunities  
5 for commercial exploitation, and is this an IT-based  
6 project. Thank you very much.

7 ANGELA GRAVES: Thank you.

8 (Off the record until 7:00.)

9 ANGELA GRAVES: Is there  
10 anyone else present who would like to make an oral  
11 statement? If not, this hearing is officially  
12 closed. Please remember, however, that the record  
13 of the hearing will remain open until 5 P.M.  
14 tomorrow, Thursday, September 9th, for the  
15 submission of written statements. Thank you very  
16 much.

17  
18  
19 \* \* \* \*